

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

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|---------------------------------------|---|-------------------|
| BRIAN DIAZ, | : | |
| Petitioner, | : | |
| | : | |
| v. | : | No. 2:20-cv-00873 |
| | : | |
| MARK CAPOZZA, <i>SUPERINTENDENT</i> ; | : | |
| DISTRICT ATTORNEY OF THE COUNTY OF | : | |
| PHILADELPHIA; ATTORNEY GENERAL, | : | |
| OF THE STATE OF PENNSYLVANIA, | : | |
| Respondents. | : | |

ORDER

AND NOW, this 31st day of May, 2022, upon consideration of the Petition for Writ of Habeas Corpus, ECF No. 1; the Response in Opposition thereto, ECF No. 7; the Report and Recommendation (“R&R”) issued by Magistrate Judge David R. Strawbridge on April 26, 2022, ECF No. 12; the absence of objections;¹ the Order dated May 11, 2022, directing Diaz to show cause no later than May 27, 2022, why his habeas corpus petition should not be dismissed as

¹ When neither party objects to a magistrate judge’s report and recommendation, the district court is not statutorily required to review the report, under de novo or any other standard. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 152 (1985). Nevertheless, the United States Court of Appeals for the Third Circuit has held that it is better practice to afford some level of review to dispositive legal issues raised by the report. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987), *writ denied* 484 U.S. 837 (1987). “When no objections are filed, the district court need only review the record for plain error or manifest injustice.” *Harper v. Sullivan*, No. 89-4272, 1991 U.S. Dist. LEXIS 2168, at *2 n.3 (E.D. Pa. Feb. 22, 1991). *See also Hill v. Barnacle*, No. 15-3815, 2016 U.S. App. LEXIS 12370, at *16-17 (3d Cir. 2016) (holding that even when objections are filed, district courts “are not required to make any separate findings or conclusions when reviewing a Magistrate Judge’s recommendation de novo under 28 U.S.C. § 636(b)”); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (explaining that in the absence of a timely objection, the court should review the magistrate judge’s report and recommendation for clear error). The district court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

moot because he has been paroled, ECF No. 15; and for the reasons set forth in the R&R and May 11, 2022 Order; **IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation, ECF No. 12, is **ADOPTED**.
2. The petition for writ of habeas corpus, ECF No. 1, is **DENIED and DISMISSED**.
3. There is no basis for the issuance of a certificate of appealability.
4. The case is **CLOSED**.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.
JOSEPH F. LEESON, JR.
United States District Judge